

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8467 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJNIKANT S/O. KANTILAL

DAMODARDAS SHAH

Versus

UNION OF INDIA

Appearance:

MR HARSHAD J SHAH, Advocate for Petitioner

MR JAYANT PATEL, Addl.Central Govt.Standing Counsel
for Respondent No. 1

SERVED BY DS for Respondent No. 3, 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 26/12/96

ORAL JUDGEMENT

This Special Civil Application has been filed by Rajnikant Kantilal Shah seeking direction to quash the order of detention dated 19.12.1974 under which said Kantilal Damodardas Shah was detained under the provisions of the Conservation of Foreign Exchange and

Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA Act'). A further direction has been sought to quash the notices issued under the provisions of Smuggling and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as 'SAFEMA'). The said order was earlier challenged before this Court but the same was rejected by the order of this Court dated 4.2.1977, which reads as under:

"We are dismissing the application as the enforcement of the fundamental rights conferred by Articles 14, 19, 21 and 22 of the Constitution of India have been suspended. It would however, be open to the petitioner to make a fresh application after the ban imposed on the enforcement or the aforesaid rights is lifted. Subject to the aforesaid observation, this application is dismissed. Rule discharged."

2. The say of the petitioner is that respondent No.2 issued notice under SAFEMA on 3.5.1979 which was received by the petitioner on 7.5.1979. The foundation of notice under SAFEMA was the detention of Kantilal D Shah. The petitioner challenged the order of detention as well as the notices issued under SAFEMA by filing Special Civil Application being Special Civil Application No.2051/79. The said Special Civil Application was rejected by the order of the Division Bench of this Court dated 9.8.1994. The order reads as follows:

"In view of the decision of the supreme Court in the case of Attorney General of India vs. Amrutlal Prajivandas reported in JT 1994(3) SC 583, this petition is dismissed."

3. Mr J N Paptel, learned Addl. Central Government Standing Counsel raised preliminary objections with respect to the maintainability of the present Special Civil Application. The first preliminary objection is that the present Special Civil Application is barred by the principles of res judicata and constructive res judicata. Secondly, the impugned notice is of the year 1979 and the petition has been filed in November, 1996 i.e. there is delay of 18 years. Dealing with the first contention, he submits that this aspect has been examined in detail in the identical group of cases examined by this Court in Special Civil Application No. 6897/96 and other matters. By judgment dated 4.10.1996 the court held that the Special Civil Application is barred by principles of res judicata. Mr H T Shah, learned Advocate submits that in view of the decision of the

Supreme Court reported in AIR 1960 SC 1457 and AIR 1968 SC 958, the decision of the learned Single Judge in Special Civil Application No.6897/96 cannot be taken as binding decision. It may be stated that the judgment of the learned Single Judge is based on the decision of the Supreme Court in the case of Forward Construction Co. vs. Prabhat Mandal, reported in AIR 1986 SC 391, Direct Recruit Class II Engg.Officers' Association v. State of Maharashtra, reported in AIR 1990 SC 1607 and the Full Bench decision in the case of Bhanubhai M Patel vs. State of Gujarat, reported in 1996(2) GLR 803. The cases referred by the learned Advocate has no application to the facts of the present case. In view of this, I am in complete agreement with the view expressed by Brother M R Calla, J. in the judgment referred to above. In view of this, the preliminary objections raised by the learned Addl.Central Government Standing Counsel is upheld.

4. The petitioner has tried to raise certain contentions on the basis of acquittal recorded by the Metropolitan Magistrate in Customs Cases. In my view, the said judgment cannot be of any help as the SAFEMA notices were issued on the basis of contention of the petitioner's father-Kantilal D Shah.

5. In view of the aforesaid, this Special Civil Application is rejected. Rule discharged.

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